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Pemungut Duti Setem v Lee Koy Eng (as administrator for the estate of Tan Kok Lee @ Tan Chin Chai, deceased)

B

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO B-01(A)-335–07 OF 2020
MOHAMAD ZABIDIN, HADHARIAH SYED ISMAIL AND GUNALAN MUNIANDY JJCA
21 OCTOBER 2021

C

Revenue Law — Stamp duty — Document improperly stamped — Children of intestate deceased signed deed renouncing their entitlement to deceased's properties in favour of their mother — Mother obtained court order vesting properties in her D *— Collector of Stamp Duty charged ad valorem stamp duty on instruments transferring the properties to the mother on ground they were 'release or renunciation of property by way of gift' from the children to her under item 66(c) of First Schedule to Stamp Act 1949 ('the SA') — Whether instruments were only chargeable with nominal stamp duty of RM10 under item 32(i) of First Schedule* E *to SA — Whether ab initio renunciation by children disentitled them to any share in deceased's estate — Whether children possessed no legal right title or interest in the estate which they could validly gift away — Whether instruments of transfer could not be construed as voluntary inter vivos disposition by way of gift under s 16 of SA — Whether true nature of transfer instruments was to give effect to children's* F *renunciation of their entitlement to deceased's estate*

The respondent was one of two administrators of the estate of her husband who died intestate. The estate consisted, inter alia, of the deceased's interest in five pieces of land ('the lands'). Under the Distribution Act 1958 ('the DA'), the G respondent and the deceased's two children were each entitled to one-third of the deceased's estate. By a deed of family arrangement ('DFA') executed between the respondent and the two children, the children renounced their entitlement to the lands in favour of the respondent. The respondent then obtained a High Court order vesting in her the deceased's interest in the lands. H Thereafter, the administrators executed memorandums of transfer ('the MOTs') under the National Land Code to transfer the lands to the respondent. The appellant imposed ad valorem stamp duty on the MOTs on the ground that they were a 'release or renunciation of property by way of gift' under item 66(c) of the First Schedule to the Stamp Act 1949 ('the SA'). The respondent I objected and applied for a review of the assessment on the ground that only a stamp duty of RM10 was chargeable on the MOTs under item 32(i) of the First Schedule to the SA. The appellant refused to review his decision whereupon the respondent paid the stamp duty as assessed and appealed to the High Court against the appellant's decision. The High Court agreed with the respondent

that the MOTs were only chargeable with a nominal stamp duty of RM10 under item 32(i) and ordered the appellant to refund the excess duty the respondent had paid with interest thereon at 5%pa until the amount was fully paid. The High Court held that: (a) the MOTs were intended to give effect to the vesting order and the deed of renunciation executed by the deceased's children; (b) based on the Federal Court's decision in *Chor Phaik Har v Farlim Properties Sdn Bhd* [1997] 3 MLJ 188 ('Chor Phaik Har') the deceased's children had, at the time of their renunciation, no beneficial or legal interest in the estate which they were capable of gifting to the respondent; (c) even though the children were 'entitled' under the DA to two-thirds of the estate, such entitlement was not equivalent to a beneficial or legal right or interest in the estate; and (d) the DFA could not be construed as a gift. In the instant appeal against the High Court's decision, the appellant contended that even though the deceased's estate had not been fully administered, the children had a beneficial right to the properties in the estate which they could gift to the respondent and therefore their renunciation should be construed as a conveyance or transfer operating as a voluntary inter vivos disposition under s 16 of the SA which was subject to ad valorem duty. The appellant pointed out that the instant case was not one where the MOTs were a standard instrument of transfer from a deceased's estate to a beneficiary for which a nominal stamp duty of RM10 was chargeable; rather, the children had released/renounced their right to the properties to another beneficiary by way of gift which attracted ad valorem stamp duty pursuant to item 66(c) read with item 46 of the First Schedule to the SA. The appellant also said there was no provision under the SA that authorised the High Court to order payment of interest on the excess stamp duty ordered to be refunded to the respondent. The respondent, on the other hand, submitted that a beneficiary could not be forced to accept a succession against his will and since the deceased's children had renounced their entitlement to the lands ab initio, they never had any right, title or interest in the properties which they could legally gift away.

Held, unanimously dismissing the appeal and affirming the High Court's decision:

(1) A beneficiary of an estate could not be forced to accept a legacy, and if the beneficiary expressed his intention to renounce his entitlement to the deceased's estate, then the legacy shall, for all intents and purposes, be treated as never having belonged to him. In the present case, the deceased's estate never passed to his children as they had refused to accept the estate ab initio via the DFA. As a result, no part or portion of the estate came into their possession or ownership. Consequently, the High Court decided that when the children disclaimed their respective one-third entitlements under s 6(1)(e) of the DA, the estate of their late father flowed, by operation of law, to the remaining beneficiary, namely, the respondent (see paras 38–40).

(2) It was indisputable that in order for a gift inter vivos to take place, the giver must have had possession of the right to the property that was intended to be given away (see para 44).

(3) Whether item 66(c) of the First Schedule to the SA applied in the instant case turned essentially on whether the instrument releasing the properties to the respondent was 'by way of gift'. The High Court judge correctly determined the issue by construing the true nature of the instrument — regardless of how it was labelled or described — after considering all relevant documents and circumstances. The judge correctly concluded that on the factual matrix of the instant case, the MOTs could not be regarded as a gift from the children to the respondent but rather they were intended solely to give effect to the renunciation (entitlements under the DA) that they had made. The judge's conclusion that the MOTs were not a gift by the children of their interest in the estate — because as beneficiaries they had no right or interest in the estate until the administration of the estate was completed, ie, distributed in accordance with law — was plainly correct as explicit in the judgment of the Federal Court in *Chor Phaik Har* (see paras 57–58, 60–61, 63 & 72).

(4) The deceased's children when making the renunciation of their entitlements under the DA had no capacity to make a gift to the respondent, for, in order to make an inter vivos gift, the giver had to possess the right to the property in question which the beneficiaries in the instant case did not have at the point in time. Their renunciation of entitlement made vide the DFA could not be equated to an inter vivos gift to the respondent. Under s 6(1)(e) of the DA, the children were merely 'entitled' to two-thirds of the deceased's estate. An entitlement to an estate must not be confused with a beneficial and legal right or interest in the estate which could be given absolutely as a gift to the respondent. The appellant's assessment of stamp duty on the MOTs under item 66(c) of the First Schedule to the SA was therefore misconceived as the estate had been disclaimed by the children, meaning it was never vested in them, and there could be no valid gift that could flow from them to the respondent (see paras 64–66).

(5) The High Court correctly referred to s 11 of the Civil Law Act 1956 ('the CLA') and O 42 r 12 of the Rules of Court 2012 ('the ROC') when ordering interest to be paid on the refund of the excess stamp duty that the respondent had paid. It was a 'debt' that was due from the appellant to the respondent within the meaning of s 11 of the CLA and a 'judgment debt' as understood in O 42 r 12 of the ROC. The court had wide discretionary power to award interest where applicable. The rate of 5%pa awarded by the High Court complied with O 42 r 12 (see paras 69–71).

[Bahasa Malaysia summary

Responden adalah salah seorang daripada dua pentadbir harta pusaka suaminya yang meninggal dunia tanpa wasiat. Harta pusaka tersebut terdiri, antara lain, kepentingan si mati dalam lima keping tanah ('hartanah tersebut'). Di bawah Akta Pembahagian 1958 ('AP'), responden dan dua anak si mati masing-masing berhak mendapat satu pertiga daripada harta pusaka si mati. Melalui surat ikatan pengaturan keluarga ('SIPK') yang ditandantangani antara responden dan kedua-dua kanak-kanak tersebut, kanak-kanak tersebut melepaskan hak mereka ke atas hartanah tersebut kepada responden. Responden kemudiannya memperoleh perintah Mahkamah Tinggi yang meletak hak kepadanya kepentingan si mati pada tanah tersebut. Lanjutan itu, pentadbir melaksanakan memorandum pindahmilik ('MOT') di bawah Kanun Tanah Negara untuk memindahmilik tanah tersebut kepada responden. Perayu mengenakan duti setem ad valorem ke atas MOT atas alasan bahawa ia adalah 'pelepasan atau penyerahan hak hartanah tersebut melalui pemberian' di bawah perkara 66(c) Jadual Pertama Akta Setem 1949 ('SA'). Responden membantah dan memohon semakan semula atas alasan bahawa hanya duti setem sebanyak RM10 dikenakan ke atas MOT di bawah perkara 32(i) Jadual Pertama kepada SA. Perayu enggan menyemak keputusannya di mana responden membayar duti setem seperti yang dinilai dan merayu kepada Mahkamah Tinggi terhadap keputusan perayu. Mahkamah Tinggi bersetuju dengan responden bahawa MOT hanya boleh dikenakan duti setem nominal sebanyak RM10 di bawah perkara 32(i) dan memerintahkan perayu membayar balik lebihan duti yang telah dibayar responden dengan faedah ke atasnya pada kadar 5% setahun sehingga jumlah telah dibayar sepenuhnya. Mahkamah Tinggi memutuskan bahawa: (a) MOT bertujuan untuk melaksanakan perintah peletakhakan dan surat ikatan pelepasan hak yang dilaksanakan oleh anak-anak si mati; (b) berdasarkan keputusan Mahkamah Persekutuan dalam *Chor Phaik Har v Farlim Properties Sdn Bhd* [1997] 3 MLJ 188 ('Chor Phaik Har') anak-anak si mati, pada masa pelepasan hak mereka, tiada kepentingan benefisial atau undang-undang atas harta pusaka yang mereka mampu hadiahkan kepada responden; (c) walaupun anak-anak tersebut 'berhak' di bawah SA kepada dua pertiga daripada harta pusaka, hak tersebut tidak bersamaan dengan hak atau kepentingan benefisial atau undang-undang dalam harta pusaka; dan (d) SIPK tidak boleh ditafsirkan sebagai hadiah. Dalam rayuan semasa terhadap keputusan Mahkamah Tinggi, perayu berpendapat bahawa walaupun harta pusaka si mati belum ditadbir sepenuhnya, anak-anak tersebut mempunyai hak benefisial ke atas harta pusaka yang boleh mereka hadiahkan kepada responden dan oleh itu pelepasan hak mereka harus ditafsirkan sebagai pindahmilik atau pemindahan yang beroperasi sebagai pelupusan inter vivos sukarela di bawah s 16 SA yang tertakluk kepada kewajipan ad valorem. Perayu menegaskan bahawa kes semasa bukanlah kes di mana MOT adalah instrumen standard pindahmilik daripada harta pusaka si mati kepada benefisiari yang mana duti setem nominal sebanyak RM10

dikenakan; sebaliknya, kanak-kanak tersebut telah melepaskan/menolak hak mereka ke atas hartanah tersebut kepada benefisiari lain melalui pemberian hadiah yang mengenakan duti setem ad valorem menurut perkara 66(c) dibaca bersama perkara 46 Jadual Pertama kepada SA. Perayu juga berpendapat tiada peruntukan di bawah SA yang memberi kuasa kepada Mahkamah Tinggi untuk memerintahkan pembayaran faedah ke atas lebihan duti setem yang diperintahkan supaya dikembalikan kepada responden. Responden, sebaliknya, menghujahkan bahawa waris tidak boleh dipaksa untuk menerima penggantian di luar kehendaknya dan memandangkan anak-anak si mati telah melepaskan hak mereka ke atas tanah ab initio, mereka tidak pernah mempunyai sebarang hak, hak milik atau kepentingan dalam hartanah tersebut yang boleh mereka hadiahkan secara sah.

Diputuskan, sebulat suara menolak rayuan dan mengekalkan keputusan Mahkamah Tinggi:

(1) Seseorang benefisiari harta pusaka tidak boleh dipaksa untuk menerima warisan, dan sekiranya benefisiari menyatakan hasratnya untuk melepaskan haknya ke atas harta pusaka si mati, maka pewarisan tersebut hendaklah, untuk semua maksud dan tujuan, dianggap sebagai tidak pernah menjadi milik beliau. Dalam kes semasa, harta pusaka si mati tidak pernah diserahkan kepada anak-anaknya kerana mereka enggan menerima harta pusaka ab initio melalui SIPK. Akibatnya, tiada bahagian atau agihan harta pusaka tersebut menjadi milik atau pemilikan mereka. Akibatnya, Mahkamah Tinggi memutuskan bahawa apabila kanak-kanak tersebut menafikan hak satu pertiga masing-masing di bawah s 6(1)(e) AP, harta pusaka arwah bapa mereka bergerak, melalui kuatkuasa undang-undang, kepada benefisiari yang tinggal, iaitu, responden (lihat perenggan 38–40).

(2) Tidak dapat dinafikan bahawa untuk membolehkan hadiah inter vivos berlaku, pemberi mesti memiliki hak ke atas hartanah yang dimaksudkan untuk diberikan (lihat perenggan 44).

(3) Sama ada perkara 66(c) Jadual Pertama kepada SA yang digunakan dalam kes semasa bertukar pada asasnya sama ada instrumen yang melepaskan hartanah kepada responden adalah 'melalui pemberian'. Hakim Mahkamah Tinggi dengan betul menentukan isu tersebut dengan menafsirkan sifat sebenar instrumen — tanpa mengira cara ia dilabel atau diterangkan — selepas mempertimbangkan kesemua dokumen dan keadaan yang wajar. Hakim membuat kesimpulan dengan betul bahawa pada matriks fakta kes semasa, MOT tidak boleh dianggap sebagai hadiah daripada kanak-kanak kepada responden sebaliknya ia bertujuan semata-mata untuk memberi kesan kepada pelepasan (kelayakan di bawah AP) yang mereka buat. Kesimpulan hakim bahawa MOT bukanlah hadiah oleh anak-anak kepentingan mereka dalam harta

pusaka — kerana sebagai benefisiari mereka tidak mempunyai hak atau kepentingan dalam harta pusaka sehingga pentadbiran harta pusaka selesai, iaitu, diagihkan mengikut undang-undang — adalah jelas betul seperti yang diputuskan dalam penghakiman Mahkamah Persekutuan dalam *Chor Phaik Har* (lihat perenggan 57–58, 60–61, 63 & 72).

(4) Anak-anak si mati apabila membuat pelepasan hak mereka di bawah SA tidak mempunyai kapasiti untuk memberi hadiah kepada responden, kerana, untuk memberi hadiah inter vivos, pemberi perlu memiliki hak ke atas harta yang dipersoalkan. yang tidak dimiliki oleh benefisiari dalam kes semasa pada masa itu. Penolakan kelayakan mereka kerana SIPK tidak boleh disamakan dengan hadiah inter vivos kepada responden. Di bawah s 6(1)(e) AP, kanak-kanak itu hanya 'berhak' kepada dua pertiga daripada harta pusaka si mati. Kelayakan kepada harta pusaka tidak boleh dikelirukan dengan hak atau kepentingan yang bermanfaat dan sah dalam harta pusaka yang boleh diberikan secara mutlak sebagai hadiah kepada responden. Oleh itu, penilaian perayu terhadap duti setem ke atas MOT di bawah perkara 66(c) Jadual Pertama kepada SA adalah salah anggap kerana harta pusaka telah dinafikan oleh anak-anak, bermakna ia tidak pernah terletak hak pada mereka, dan tidak mungkin ada hadiah yang sah yang boleh bergerak daripada mereka kepada responden (lihat perenggan 64–66).

(5) Mahkamah Tinggi dengan betul merujuk kepada s 11 Akta Undang-Undang Sivil 1956 ('AUS') dan A 42 k 12 Kaedah-Kaedah Mahkamah 2012 ('KKM') apabila mengarahkan faedah dibayar ke atas pemulangan lebihan duti setem yang telah dibayar oleh responden. Ia adalah 'hutang' yang terhutang daripada perayu kepada responden dalam pengertian s 11 AUS dan 'hutang penghakiman' seperti yang difahami dalam A 42 k 12 KKM. Mahkamah mempunyai kuasa budi bicara yang luas untuk memberikan faedah sekiranya suai. Kadar 5% setahun yang diberikan oleh Mahkamah Tinggi mematuhi A 42 k 12 (lihat perenggan 69–71).]

Cases referred to

BASF Services (M) Sdn Bhd v Pemungut Duti Setem [2010] 4 MLJ 596, FC (refd)

Chor Phaik Har v Farlim Properties Sdn Bhd [1997] 3 MLJ 188, FC (folld)

Ch'ng Cheng Siew (suing as administrator of estate of Wong See Yan, deceased) v Pemungut Duti Setem [2016] 7 MLJ 758, HC (refd)

Scott, Decd, In re; Widdows v Friends of the Clergy Corporation and others [1975] 1 WLR 1260, Ch D (refd)

Ketua Pengarah Pertubuhan Keselamatan Sosial v Wong Ton Feng [2020] 12 MLJ 625; [2020] 4 MLRH 623, HC (refd)

Kumarappa Chettiar son of Raman Chettiar of Klang v The Federated Malay States [1938] 1 MLJ 9 (refd)

Maybank Trustees Bhd (formerly known as Aseambankers Malaysia Bhd) v Amtrustee Bhd & Ors and other appeals [2020] 4 MLJ 405, CA (refd)
Ngan & Ngan Holdings & Anor v Central Mercantile Corp (M) Sdn Bhd [2010] 1 MLJ 822, CA (folld)
Palm Oil Research and Development Board Malaysia & Anor v Premium Vegetable Oils Sdn Bhd & another appeal [2005] 3 MLJ 97; [2004] 2 CLJ 265, FC (refd)
Tan Chong Kiat v Kwan Ah Soh & Anor [1998] 3 MLJ 884; [1998] 5 CLJ 760, HC (refd)
Tay Geok Yap & Anor v Commissioner of Stamps, Singapore [1966] 2 MLJ 255
Yusof bin Sudin v Suruhanjaya Perkhidmatan Polis & Anor [2011] 5 MLJ 465; [2012] 1 CLJ 448, FC (refd)

Legislation referred to

Civil Law Act 1956 s 11
Distribution Act 1958 s 6(1)(a), (1)(e)
National Land Code s 327, Form 14A
Rules of Court 2012 O 42 r 12
Stamp Act 1949 ss 16, 16(1), 36(1), 38A(1), 39(1), (4), First Schedule, items 32(a), 32(i), 46, 66(c)

Appeal from: Originating Summons No BA-14–1–03 of 2019 (High Court, Shah Alam)

Hazlina bt Hussain (Ridzuan bin Othman and Mohamad Asyraf bin Zakaria with her) (Inland Revenue Board of Malaysia) for the appellant.
Chew Themous Foo (Abigail Kung And Teaw Zhen with him) (Chambers of Jason) for the respondent.

Gunalan Muniandy JCA:

INTRODUCTION

[1] This is the appellant's appeal against the decision of the learned High Court judge ('LHCJ') where the LHCJ allowed the respondent's appeal with costs and ordered the appellant to refund the excess of stamp duty that was paid by the respondent.

BACKGROUND FACTS

[2] On 8 August 2018, the respondent and respondent's son (Mr Tan Chun Keat) were appointed by the Shah Alam High Court as co-administrators of the deceased's (the respondent's husband's) estate.

[3] In view of the deceased's intestacy, s 6(1)(a) of the Distribution Act

1958 ('the DA 1958') provides that the respondent and the deceased's two children shall each have one-third of the estate. The estate consists of, among others, the deceased's interest in five pieces of land.

[4] The respondent and the deceased's two children executed a 'Deed of Family Arrangement' on 2 October 2018 ('DFA') which the respondent and the deceased's two children agreed to distribute, among others, the deceased's interest in the five properties to the respondent only.

[5] On 20 December 2018, the Shah Alam High Court issued an order to vest the deceased's interest in the five properties to the respondent only (vesting order).

[6] Pursuant to the vesting order, the respondent and Mr Tan Chun Keat executed five 'Forms 14A', instruments of transfer of the deceased's interest in the five properties under the National Land Code, in favour of the respondent only.

[7] Pursuant to s 36(1) of the Stamp Act 1949 ('the SA'), the collector imposed ad valorem stamp duty on the Forms 14A. The collector's assessment was made on the ground that the Forms 14A concerned 'release or renunciation by way of gift' under item 66(c) of the First Schedule to the SA.

[8] The respondent objected to the collector's assessment and applied to the collector to review the collector's assessment under s 38A(1) of the SA. The review application was made on the basis that stamp duty of RM10 should be assessed for the Forms 14A in accordance with item 32(i) in the First Schedule.

[9] The collector dismissed the review application. Hence, the respondent paid the stamp duty in full as stated in the collector's assessment. The respondent then filed appeals to the High Court against the collector's dismissal of the review application pursuant to s 39(1) of the SA.

[10] The only question posed by these appeals is whether the Forms 14A in this case attract ad valorem stamp duty under item 66(c) (release or renunciation of property by way of a gift) or a fixed amount of stamp duty of RM10 pursuant to item 32(i) (conveyance or transfer which is not specifically charged with stamp duty).

FINDING OF THE HIGH COURT

[11] The High Court allowed the respondent's appeal with costs and ordered the appellant to refund the excess stamp duty that was paid by the respondent.

[12] The LHCJ was of the view that the true nature of the Forms 14A was solely to give effect to the renunciation (entitlements under the DA) by the deceased's two children. This decision was premised on the following reasons:

(a) the intestate death of the deceased has attracted the application of the DA 1958. The entitlement of the deceased's two children to the estate only arises by virtue of operation of law, namely, s 6(1)(e) of the DA 1958;

(b) the deceased's two children and the respondent had entered into the deed which provided for, among others, the renunciation (entitlements under the DA 1958);

(c) the vesting order was obtained by the co-administrators of the estate so as to give effect to the renunciation (entitlements under the DA 1958); and

(d) the execution of Forms 14A was performed pursuant to the deed and vesting order, once again, to give effect to the renunciation (entitlements under the DA 1958).

[13] The LHCJ was also of the view that the true nature of the Forms 14A in this case cannot be a gift of to the interest of the deceased's two children in the estate from the deceased's two children to the respondent. The LHCJ decided as follows:

(a) it was clear from the Federal Court's judgment in *Chor Phaik Har v Farlim Properties Sdn Bhd* [1997] 3 MLJ 188 at 195–196, that a beneficiary of a deceased's estate had no right or interest in the estate until the administration of the estate was complete in the sense that the estate had been distributed in accordance with the law of distribution of the estate. Consequently, as the deceased's two children did not have any beneficial and legal interest in the estate, the deceased's two children cannot grant any gift regarding the estate to the respondent; and

(b) by virtue of the operation of s 6(1)(e) of the DA 1958, the deceased's two children were only 'entitled' to two-thirds of the estate. An entitlement to an estate is not equivalent to a beneficial and legal right or interest in the estate which can be given absolutely as a gift. Furthermore, when the deceased's two children renounce or disclaim their entitlement to the estate by way of cl 1, the renunciation (entitlements under the DA 1958) is not a gift to the respondent.

[14] The LHCJ also held that the collector had erroneously imposed ad valorem stamp duty on the Forms 14A in this case. Accordingly, pursuant to s 39(4) of the SA, the High Court judge ordered the collector to refund to the respondent the excess stamp duty paid by the respondent to the collector.

[15] The LHCJ also ordered the collector to pay to the respondent interest at the rate of 5%pa on the excess from the date of the oral decision of these appeals until the collector's full payment of the excess to the respondent.

THE APPELLANT'S SUBMISSION

[16] The appellant submitted that the LHCJ was wrong to decide that the transfer between the beneficiaries (the deceased's two children) to the respondent is not a 'gift' within the context of the Stamp Act.

[17] The LHCJ was also wrong to apply the Federal Court decision in *Chor Phaik Har v Farlim Properties Sdn Bhd* [1997] 3 MLJ 188 to the facts of the present case. The case of *Chor Phaik Har* does not involve the Stamp Act. Instead, it is a case that involved s 327 of the National Land Code.

[18] Based on the present facts, as the deceased died intestate, the deceased's estate was distributed based on the Distribution Act. However, the peculiar facts of the case show the beneficiaries (the deceased's children) executed a deed of family arrangement ('DFA') in which the beneficiaries reached a consensus to renounce and forego their rights, benefit and interest that they received from the deceased's properties to be vested in the respondent as the sole beneficiary. The respondent agreed to receive the portions of the children.

[19] The appellant submitted that the amount of stamp duty assessed and charged on the memorandum of transfer (Form 14A) for the 2/3 portion and assessed accoding to item 66(c), the First Schedule of the Stamp Act is legally correct.

[20] The appellant also submitted that the LHCJ erred in law and fact for failing to consider the existence of the DFA dated 2 October 2018. The beneficiaries mutually entered into the deed, where they renounced or released their entitlement over 2/3s of the property to the respondent. The deed confers a benefit to the respondent and grants the respondent an interest she did not previously possess. Therefore, the renunciation is a conveyance or transfer by the said beneficiaries operating as a voluntary disposition inter vivos under s 16 of the Stamp Act which is subject to ad valorem duty.

[21] The appellant submitted that the assessment raised by the appellant had fulfilled the first element of item 66(c) of the First Schedule, ie the element of 'release and renunciation of rights' whereby the transfer to the respondent was effected due to the release and renunciation of the said beneficiaries' rights to the respondent.

[22] The LHCJ also had erred in ordering the payment of interest of 5% on the amount of stamp duty to be repaid by the appellant to the respondent. Subsection 39(4) of the Stamp Act provides that the court has the discretion to order costs regarding the appeal by the duty payer if the duty payer's appeal is allowed. However, the Stamp Act does not give the authority for the court to impose interest.

THE RESPONDENTS' SUBMISSION

[23] The respondent submitted that based on the the case of *Ch'ng Cheng Siew (suing as administrator of estate of Wong See Yan, deceased) v Pemungut Duti Setem* [2016] 7 MLJ 758, it is clear that a beneficiary of an estate cannot be forced to accept a succession against his will if the beneficiary express his intention to renounce his entitlement to the deceased's estate. Then, the legacy shall, for all intents and purposes, be treated as never belonging to him.

[24] The estate of the late Tan Kok Lee @ Tan Chin Chai (or more specifically, the properties) was never pass to the Tan siblings as they have refused to accept the estate ab initio via the deed of family arrangement dated 2 October 2018 which resulted the estate was never possessed by or belonged to any one of them. When Tan siblings disclaimed their respective one-third entitlement in the deceased's properties under s 6(1)(e) of the Distribution Act 1958, the estate of their late father would, by operation of law, flow to the remaining beneficiary, namely the respondent.

[25] The respondent futher submitted that the Tan siblings are not 'true possessors' as they are not and were never registered as proprietors of the properties. Accordingly, the renunciation of entitlement made by the Tan siblings vide the deed of family arrangement cannot be equated as a gift inter vivos to the respondent as they do not, at any point in time, possess any interest, right and/or title on the properties. The estate of Tan Kok Lee @ Tan Chin Chai remains intact and unaffected.

[26] As such, the respondent submitted that the assessment of the Forms 14A made by the appellant under item 66(c) of the First Schedule to Act 378 is misconceived as the estate had been disclaimed by the Tan siblings which made the estate having never been vested in them. In the circumstances, there can be no valid gift at all that may flow from the Tan siblings to the respondent. The law is trite. A beneficiary under an intestacy has no interest or property in the personal estate of a deceased person until the administration of his or her estate is completed and distribution made according to the law of distribution of the intestate estate as correctly decided by the LHCJ.

[27] Therefore, the LHCJ has rightly held that the intestate death of the deceased has attracted the application of Distribution Act 1958 wherein the entitlement of the Tan siblings to the estate only arises by virtue of operation of law, namely s 6(1)(e) of the Distribution Act 1958. Under the said provision, the deceased's two children are merely 'entitled' to two-thirds of the estate. An entitlement to an estate must not be confused with a beneficial and legal right or interest in the estate which can be given absolutely as a gift to the respondent.

OUR FINDING

[28] Based on the submissions of both the parties in the appeal, the question posed for our determination is, what is the correct duty chargeable on the instrument of transfer (Form 14A) under the Stamp Act 1949 (the Stamp Act), vis:

(a) whether the appellant's ad valorem duty under item 66(c), First Schedule read together with s 16(1) and items 32(a) and 46 of the Stamp Act is correct; or

(b) the Form 14A should be chargeable with a stamp duty of RM10 under item 32(i) First Schedule of the Stamp Act as contended by the respondent.

[29] On this core issue, the decision of the LHCJ was that the Form 14A in question is subject to a nominal amount of RM10 under item 32(i) of the Stamp Act. Hence, the High Court allowed the respondent's appeals against the decision of the appellant on 20 December 2019.

[30] The material parts of the LHCJ's decision that are the subject of the appellant's dissatisfaction are these:

> 21. Based on the reasons explained in the above paras 18–20:
>
> (1) Item 46 only applies to 'gift' and cannot be a lawful basis for assessment of stamp duty regarding Forms 14A in these 2 Appeals;
>
> (2) Item 66(c) applies to a 'release or renunciation … whereby a person releases any property: … (c) If by way of gift'. Item 66(c) cannot apply to Forms 14A in this case because the deceased's 2 Children do not have 'any property' in the *Estate Chor Phaik Har*; and
>
> (3) Item 32 applies to, among others, 'conveyance, … transfer'. The Forms 14A in these 2 Appeals fall within the meaning of 'conveyance' and/or *'transfer'* in Item 32. None of the paragraphs (a) to (h) in Item 32 apply to the Forms 14A in this case. Accordingly, only Item 32(i) applies to the Forms 14A in these 2 Appeals.

[31] It was contended by the appellant that, having analysed the High Court's grounds of decision, the error of the LHCJ's judgment arose when he concluded that the transfer between the deceased's children to the respondent is not a gift based on the following two main grounds:

(a) the High Court's reliance on the Federal Court case of *Chor Phaik Har v Farlim Properties Sdn Bhd* [1997] 3 MLJ 188 at 195–196; and

(b) the High Court failed to acknowledge the deed of family arrangement's significance that, the beneficiaries (the children) had released or made a renunciation whereby the beneficiaries released their properties to the respondent (mother) as a sole beneficiary by way of gift.

[32] It was purportedly also erroneous for the LHCJ to have made an order to impose interest at the rate of 5% on the repayment of the stamp duty by the appellant to the respondent as it is contrary to the Stamp Act.

[33] Primarily, the appellant's position was that the LHCJ had incorrectly applied the Federal Court case of *Chor Paik Har* to the facts and issues in dispute in the instant case. The question for our deliberation was whether the LHCJ was wrong to decide that the transfer between the beneficiaries (the deceased's two children) to the respondent (mother/administratrix/beneficiary) is not a 'gift' within the context of the Stamp Act ('SA').

[34] For convenience, as was done by the LHCJ, we would reproduce the relevant provisions of the SA governing this dispute as follows:

> Instruments chargeable with duty s 4(1) Subject to (SA) and subject to the exemptions contained in [SA] and in any written law for the time being in force, the several instruments specified in the First Schedule shall, from and after the commencement of (SA), be chargeable with the several duties specified in such Schedule.
>
> ...
>
> Voluntary convenyance inter vivos.
>
> S16(1) Any conveyance or transfer operating as a voluntary disposition inter vivos shall be chargeable, with the like stamp duty as if it were a conveyance or transfer on sale.
>
> [1st Schedule]
>
> Item 32. CONVEYANCE, ASSIGNMENT, TRANSFER OR ABSOLUTE BILL OF SALE:

(h) Of any property by way of gift (whether by way of voluntary disposition or otherwise)	See Gift and Section 16(1)

(i) Of any kind not otherwise specially charged with duty	RM10

Item 46

GIFT	See Section 16(1)

Item 66

RELEASE OR RENUNCIATION that is to say, any instrument whereby a person releases any property:	
(a) If on sale	The same duty as a conveyance on sale
(b) If by way of security	The same duty as a charge or mortgage
(c) If by way of gift	The same duty as a conveyance by way of gift
(d) In any other case not otherwise specially charged with duty	RM10

[35] We would now look at how the LHCJ proceeded to resolve the dispute between the parties on the core issue before him. As correctly pointed out by him, he was faced with a conflict of decisions squarely in point with the present factual matrix. Having looked at the decisions, the LHCJ chose to follow the judgment of Vazeer Alam Mydin J (as he then was) in the High Court case of *Ch'ng Cheng Siew (suing as administrator of estate of Wong See Yan, deceased) v Pemungut Duti Setem* [2016] 7 MLJ 758 the relevant part of which states that:

> [21] I had decided in favour of the plaintiff for the following reasons. Firstly, learned counsel for the plaintiff refers to the case of *Townson v Tickell* (1819) 3 B & Ald 31, where Abbott CJ held:
>
> > *The law certainly is not so absurd as to force a man to take an estate against his will* ... I concur in that opinion, and think that the renunciation here having been by deed under the hand and seal of the party, must have the effect of making the devise with respect to him null and void ... The good sense of the thing is quite the other way; the indeed presumes, that the estate devised will be beneficial to the devisee, and that he will accept of it, until there is proof to the contrary. *Here is a renunciation by a most solemn act, viz by deed; and by that he has said, that he did not chose to accept that which is devised to him. It seems to me, that the effect of that is, that the estate never was with him at all.* (Emphasis added.)
>
> And Holroyd J added:
>
> > *I think that an estate cannot be forced on a man.* A devise, however, being prima facie for the devisee's benefit, he is supposed to assent to it, until he does some act to shew his dissent. *The law presumes that he will assent until the contrary be proved; when the contrary, however, is proved, it shews that he never did assent to the devise, and consequently, that the estate never was with him.* (Emphasis added.)
>
> And Best J said:
>
> > *It seems to be contrary to common sense to say, that an estate should vest in a man not*

> *assenting to it: there must be the assent of the party, before an interest in the property can pass to him.* It is stated in the declaration, that this party has, by his solemn deed, expressed his dissent, and renounced the estate devised by the will. *It appears to me, therefore, that no interest ever vested in him; and, therefore, there is no nothing more to be done for the purpose of giving the sole property to the plaintiff.* (Emphasis added.)

[22] I must say that though that authority is two centuries old, the law remains the same. In the more recent English case of *In re Scott, decd* [1975] 1 WLR 1260, Walton J, in construing a similar question said at p 1271:

> I approach the matter this way. Disclaimer is a refusal to accept an interest. As the old Year Books had it, nobody can put an estate upon another in spite of his teeth, and here Col Scott and Miss Scott have shown their teeth by executing the deeds of disclaimer. Now, what effect does that have? It seems to me that it leaves the executor of the will still holding the interest attempted to be disposed of under the statue, and still holding it as part of the estate of the deceased. *If somebody refuses to accept a slice of the estate of the deceased, then it still remains, in my judgment a part of the estate of the deceased.* (Emphasis added.)

[24] Thus, it is trite law that a beneficiary to an estate, whether under a will or intestacy, cannot be forced to take or accept his inheritance. And when such a beneficiary renounces his rights or interest, then that benefit will pass by operation of law to the other beneficiaries entitled thereto.

[25] In *Words and Phrases and Maxims Legalty and Judicially Defined*, Vol 8, at p 87, the term 'gift' is defined as the 'act by which the owner of a thing voluntarily transfers the title and possession of the sam from himself to another person without any consideration'. Further in *Kumarappa Chettiar son of Raman Chettiar of Klang v The Federated Malay States* [1938] 1 MLJ 9 at p 12, Thomes CJ in construing the meaning of the term 'gift inter vivos' held as follows:

> A gift inter vivos is defined in 15 Hailsham, p 692 S. 1210 as the transfer of any property from one person to another gratuitously. It is an act whereby anything is voluntarily transferred from the true possessor to another person, with full intention that the thing shall not return to the donor, and with the full intention on the part of the receiver to retain the thing entirely as his own without restoring it to the giver.

[26] Therefore, in order to make an inter vivos gift, the giver must possess the right to the property that is given. The Federal Court in *Chor Phaik Har v Farlim Properties Sdn Bhd* held in precise terms that:

> ... in law a beneficiary under an intestacy has no interest or property in the personal estate of a deceased person until the administration of the latter's estate is complete and distribution made according to the law of distribution of the intestate estate.

[27] And in that case the Federal Court held that it was clear that at the date of the execution of the sale agreements for the conveyance of beneficial interest in the subject property, the administration of the estate of the deceased had not been completed. It followed that until his estate had been fully administered by administrators and distribution made according to law, the beneficiaries had no

interest or property in the estate of the deceased so as to give them any title to the lands. Therefore, the beneficiaries could not have covenanted to convey any title to the respondents.

Likewise, in the present case, when the two beneficiaries renounced their interest, the administration of the estate was incomplete and distribution had not been made in accordance to the law of distribution of an intestate estate. Therefore, the Wong siblings did not have any interest in the properties sufficient enough to make a gift of such interest. As pointed out their renunciation of interest would lead to their interest devolving to the remaining beneficiaries by operation of law.

[36] In the case of *In re Scott, Decd; Widdows v Friends of the Clergy Corporation and others* [1975] 1 WLR 1260, Walton J remarked lucidly that:

I approached the matter in this way. Disclaimer is a refusal to accept an interest. As the old Year Books had it, nobody can put an estate upon another in spite of his teeth, and here Col Scott and Miss Scott have shown their teeth by executing the deeds of disclaimer. Now, what effect does that have? It seems to me that it leaves the executor of the will still holding the interest attempted to be disposed of under the statute, and still holding it as part of the estate of the deceased. If somebody refuses to accept a slice of estate of the deceased, then it sill remains, in my judgment, part of the estate of the deceased.

[37] The respondent brought to our attention that the decision of Vazeer Alam Meera J in *Ch'ng Cheng Siew* was later upheld by this honourable court in Civil Appeal No W-01(NCVC)(A)-361–11 of 2015 on 9 May 2016 as candidly conceded by the appellant in para 40 of the applicant's written submission dated 15 July 2020 during the leave stage application.

[38] By reference to the authorities relied upon by the LHCJ, including from leading commonwealth jurisdictions, the correct position in law was summarised by the respondent to be that:

(a) a beneficiary of an estate cannot be forced to accept the legacy; and

(b) if the beneficiary expressed his intention to renounce his entitlement to the deceased's estate, then, the legacy shall, for all intents and purposes, be treated as never belonging to him.

[39] We accept that the above are sound propositions and correct in law. In determining whether the LHCJ had arrived at a correct conclusion, it was crucial that the factual matrix of the case be properly considered. In the context of our present case, the estate of the late Tan Kok Lee @ Tan Chin Chai (or more specifically, the properties) never passed to the Tan siblings as they had

refused to accept the estate ab initio via the deed of family arrangement ('DFA') dated 2 October 2018. As a result, no part or portion of the estate came into their possession or ownership.

[40] Consequently, the LHCJ decided in essence that when the Tan siblings disclaimed their respective one-third entitlements in the deceased's properties under s 6(1)(e) of the Distribution Act 1958 (Act 300), the estate of their late father would, by operation of law, flow to the remaining beneficiary, namely, the respondent.

[41] The thrust of the respondent's contention in support of the LHCJ's decision was that the renunciation of the estate made by the Tan siblings in favour of the respondent was not a gift inter vivos but purely a devolution of interest by operation of law. In regard to the respondent's position, as correctly submitted to us, it is imperative to examine the meaning of 'gift' or 'gift inter vivos' in order to identify whether the Forms 14A in the present case shall be assessed under item 66(c) of the First Schedule to Act 378 (release or renunciation by way of gift) or item 32(i) of the First Schedule to Act 378 (conveyance or transfer which is not specifically charged with stamp duty).

[42] We share the respondent's view that in *Tan Chong Kiat v Kwan Ah Soh & Anor* [1998] 3 MLJ 884; [1998] 5 CLJ 760, a gift inter vivos was lucidly defined by Mohd Noor Abdullah J (as His Lordship then was) on p 766 in the following manner:

> A gift inter vivos may be defined shortly as the transfer of any property from one person to another gratuitously while the donor is alive and not in expectation of death. It is an act whereby something is voluntarily transferred from the true owner in possession to another person with the full intention that the thing shall not return to the donor. It has also been said that a gift is a voluntary transfer of property to another person without consideration. A gift appears to be effective when the donor intends to make it a gift and the recipient takes the thing given and keeps it, knowing that he has done so.

[43] The above definition is wholly consistent with the decision of the Learned Judge in *Ch'ng Cheng Siew* and that adopted by Thomas, CJ in *Kumarappa Chettiar son of Raman Chettiar of Klang v The Federated Malay States* [1938] 1 MLJ 9.

[44] It is indisputable that in order for a gift inter vivos to take place, the giver must as of necessity have possession of the right to the property that is intended to be given. As emphatically remarked in *Kumarappa Chettiar* a gift is regarded as an act whereby anything is voluntarily transferred from the true possessor to another person.

[45] In the context of the present dispute, the meaning to be ascribed to the phrase 'true possessor' assumed significance. The position taken by the respondent was that the phrase must be taken to mean only a registered proprietor in conformity with our Torrens System of land registration as otherwise, the word 'true' would be rendered meaningless and superfluous. In this case, neither of the Tan siblings was a registered proprietor of a subject properties and, thus, in the respondent's contention, should not be regarded as the true possessors. If this is correct in law, it would accordingly follow that the renunciation of the rights to the properties was not a gift as the estate of the deceased at the material time remained intact and unaffected.

[46] At this juncture, it would be useful to look at the reasons for the contrary position taken by the appellant in support of its stand on the core issue that the LHCJ had erred in law and fact in invoking the principle expounded by the Federal Court in *Chor Paik Har* to the facts of the present case.

[47] It was stressed by the appellant that this court must be mindful that the above Federal Court authority does not involve the Stamp Act. Instead, it is a case that involved s 327 of the National Land Code. The issue was whether Farlim Properties (the respondent) is considered as the 'person aggrieved' under s 327 of the Code to make the application to remove the caveat entered by Mr Choi Paik Har (the appellant).

[48] In that case, the decision of the Federal Court concerned the interest of the beneficiaries of the estate of Chor Bah Say, (deceased) to enter into a sale and purchase agreement ('SPA') with Farlim Properties, the purchaser. It was held that the beneficiaries were not vested with an interest in estate to enable Farlim to claim an interest in the land. The pertinent passage from the judgment of Mohamed Dzaiddin FCJ (later CJ) states that:

> 'It must be observed at the outset that there is no clear authority for the proposition that a beneficiary under an intestacy has no interest in the property of a deceased person until the estate has been fully administered. In our view, however, there is much persuasive force in what is stated in the textbook ... and a passage ... Based on the above commentaries, founded no doubt on the analogous principle of law concerning testate succession, it is our conclusion that in law a beneficiary under an intestacy has no interest or property in the personal estate of a deceased person until the administration of the latter's estate is complete and distribution made according to the law of distribution of the intestate estate. Having decided on the principle legal issue, it is left for us to examine the factual situation to see whether the Estate of Chor Bah Say has been fully administered at time of the execution of the agreement. ... Having regard to the above observation and the circumstances of the whole case, we are satisfied that at the date of execution of the sales agreements, the administration of the Estate of Chor Bah Say has not been completed. It follows until the estate has been fully administered by the administrators ... the beneficiaries have no interest or property in the Estate of Chor Bah Say. In the results that the

A respondents cannot rely on the sale agreement to justify their status as 'persons aggrieved' under section 327 of the Code.

[49] *Chor Paik Har* in the appellant's view had no application to the instant facts as it was clearly distinguishable on the facts and the law involved.
B

[50] It is trite principle that it is important to ascertain whether the decision in a given authority is restricted to its own facts and has no general application (*Yusof bin Sudin v Suruhanjaya Perkhidmatan Polis & Anor* [2011] 5 MLJ 465; [2012] 1 CLJ 448; *Maybank Trustees Bhd (formerly known as Aseambankers Malaysia Bhd) v Amtrustee Bhd & Ors and other appeals* [2020] 4 MLJ 405 (CA)).
C

[51] The appellant's basis for maintaining that item 66(c), First Schedule, SA
D was operative regardless of whether the administration of the estate was complete was the undisputed fact that the beneficiaries (the children) already had a beneficial right over the subject properties under the Distribution Act. Pursuant to that right, the deed of family arrangement ('DFA') was entered into renouncing or releasing their rights to the respondent (mother). Thereafter, the
E Forms 14A were executied pursuant to the court order dated 26 November 2018. Reference was made to *Tay Geok Yap & Anor v Commissioner of Stamps, Singapore* [1966] 2 MLJ 255, the deed or the agreement which renounced the right over the deceased's estate attracted the ad valorem duty even though the deceased's estate was still not entirely administered and still under dispute. The
F court held that:

> The right of Tan Lian Cheow to share in the estate of the deceased was property which could be the subject of bargain and sale.

Hence, it was submitted that, referring to *Tay Geok Yap*'s case, the children have
G the right to give their share in the property to the mother/respondent as held in that case. The beneficiary concerned could sell their share in the estate to other beneficiaries if they wished.

[52] Briefly, the appellant's position was that the present Form 14A based on
H the deed and renunciation of the beneficiaries' rights to the estate property was not a standard instrument of transfer from a deceaded's estate to a beneficiary for which a nominal stamp duty of RM10 is chargable in comparison to in this instance where a beneficiary releases or makes a renunciation of his property to another beneficiary by way of gift wherein the ad valorem stamp duty is
I chargeable on the conveyance made inter vivos.

[53] It was common ground that the deceased had died intestate and his estate was distributed in accordance with the Distribution Act. Also that following the DFA the deceased's children reached a consensus to operation of

law by a renounce and forego their rights, benefit, and interest that they received from the deceased's properties be vested in the name of their mother/respondent, as the sole beneficiary. Vide the same deed, the mother/respondent agreed to receive the portions of the children.

[54] On these undisputed facts, the crux of the appellant's submission was that the amount of stamp duty assessed and charged on the memorandum of transfer (Form 14A) from the 2/3 portion according to item 66(c), the First Schedule of the Stamp Act is legally correct.

[55] Now, for proper stamp duty to be chargeable under item 66(c), First Schedule, SA the instrument of release or renunciation as executed in this case must be by 'way of gift' as expressly spelt out therein for the instrument to be subject to duty under item 46, First Schedule, SA.

[56] We have taken cognisance of s 16(1) of the SA, which provides for duty payable for 'voluntary conveyance inter vivos' as if it 'were a conveyance or transfer on sale' where stamp duty charged would be under item 32, First Schedule, SA. We are also mindful of the correct approach to be adopted by a court when interpreting a taxing statute, which is to give the words their plan and ordinary meaning and not some other meaning where the object is to frustrate legitimate tax avoidance devices.

(See *Palm Oil Research and Development Board Malaysia & Anor v Premium Vegetable Oils Sdn Bhd & another appeal* [2005] 3 MLJ 97; [2004] 2 CLJ 265.)

[57] Be that as it may, we do not, with respect, agree with the basic premise of the appellant's contention that assessments of stamp duty under item 66(c), First Schedule, SA were correct in law based on a strict interpretation of this statute. As we have emphasised earlier, the applicability of item 66(c) to the present conveyance turns essentially on the conveyance being 'by way of gift' to which the LHCJ had given primary importance in the determination of the dispute before him.

[58] Our considered view on this vital point is that the LHCJ had adopted an approach that was entirely correct in the determination of the appellant's appeals before him that were centred on the applicability of item 66(c), First Schedule, SA by placing due emphasis on whether the instrument releasing the property to the respondent in this case was by way of gift by construing the true nature of the instrument. In deciding this issue, the LHCJ correctly took into account these vital matters:

(a) Forms 14A;

(b) effect of s 6(1)(e) of the DA;

(c) the entire deed, in particular cl 1; and

(d) the vesting order.

[59] The LHCJ in adopting the above approach was supported by *BASF Services (M) Sdn Bhd v Pemungut Duti Setem* [2010] 4 MLJ 596, where Suriyadi Halim Omar JCA (as he then was) delivered the following judgment of the Federal Court:

> [18] Now that this court has identified the transfer form as the instrument that is chargeable to stamp duty, the next step is to decide on whether the infrastructure fees are part of the consideration of the agreement and hence liable under item 32(a). It is generally acknowledge that the real substance of a transaction may not successfully be appreciated by mere perusal of a document, or by a hurried gauging of the machinery adapted by the parties of the transaction. Only after going through the exercise of construing the document as a whole may the real substance of that transaction be known and thenceforth ascertain the respective parties' rights and obligations, and the correctness of the respondent's adjudication (*Inland Revenue Commissioners v Duke of Westminster* [1936] AC 1; *Pernas Securities Sdn Bhd v The Collector of Stamp Duties* [1976] 1 MLJ 188). *CC Gallagher Highmore's Stamp Laws* (4th Ed) at p 7 authored:
>
> > General Rules as to Stamp Duties.
> >
> > *In order to determine whether any, and if any what, stamp duty is chargeable upon an instrument, the legal rule is that the real and true meaning of the instrument is to be ascertained*; that the description of it given in the instrument itself by the parties is immaterial ... For instance, if a writing were headed by a recital that the parties had agreed to execute the promissory note thereinafter written, yet if in truth the contract set forth was not a promissory note, but an agreement of another character, the stamp duty would be not that of a promissory note, but of the agreement. *The question therefore, stamp or no stamp, and if a stamp to what amount, is to be determined upon the real and true character and meaning of the writing.* It is sufficient to refer to the case of *Rex v Inhabitants of Ridgwell* [1827] 6 B&C 665, to establish this proposition. (Emphasis added)

[60] By applying the above authority, the LHCJ was correct in making the following observation before coming to a finding:

(a) the name, title, label or description given to the instrument/document (label) by the party(ies) in question is not conclusive. The court is not bound by the label and may go behind the label to determine the true nature of the instrument/document;

(b) the court has to construe the instrument/document as a whole;

(c) in addition to the instrument/document, the court may consider all relevant documents (relevant documents) so as to ascertain the true nature of the instrument/document;

(d) in deciding the true nature of the instrument/document, the court may consider all relevant circumstances regarding the instrument/document (relevant circumstances); and

(e) in considering the instrument/document, relevant documents and relevant circumstances, the court determines the following matters:

(i) what is the true nature of the rights and obligations of the party(ies)?

(ii) what is the effect of the instrument/document, relevant documents and relevant circumstances? and

(iii) what is the substance of the instrument/document?

[61] We do not see any error in the LHCJ's view that the true nature of Forms 14A is solely to give effect to the renunciation (entitlements under DA) by the deceased's two children. This view is fully supported by the factual matrix of this case, in essence, because:

(1) due to the intestate death of the deceased, the provisions of the Distribution Act ('the DA') became operative;

(2) the deceased's two children and the respondent entered into the DFA which provided, amongst others, for the renunciation of the former's legal entitlements;

(3) to give effect to (2) above, the co-administrators of the estate obtained a vesting order; and

(4) the Forms 14A were executed pursuant to the DFA to give effect to the children's renunciation.

[62] Likewise, the LHCJ did not err in rejecting the learned revenue counsel's reliance on two High Court orders that had dismissed appeals against the collector's assessments of stamp duties based on items 66(c) where the facts were similar to the instant case as there were no written judgments in those cases. He was clearly correct in holding that from the view point of the stare decisis doctrine, if there is no written judgment in a case, that case cannot be cited as a precedent. It is decided in *Ketua Pengarah Pertubuhan Keselamatan Sosial v Wong Ton Feng* [2020] 12 MLJ 625; [2020] 4 MLRH 623 at [24], as follows:

> [24] When a court delivers a decision but there is no written judgment regarding the decision, the decision is not a binding precedent under the stare decisis doctrine ...

[63] On the true nature of the Forms 14A in the instant case, the LHCJ concluded that it cannot be construed as a gift by the deceased two children of their interest in the estate to the appellant because as beneficiaries they had no

right or interest in the estate until the administration of the estate was complete in the sense that it had been distributed in accordance with law. This conclusion is plainly correct in law as explicit in the judgment of the FC in *Chor Phaik Har*.

[64] We are, with respect, unable to accede to the appellant's proposition that the principle in *Chor Phaik Har* was wrongly applied to the instant case on the basis that it had no relevance to the present dispute which involved the Stamp Act whereas that case concerned the National Land Code ('the NLC'), specifically s 327, where the issue for determination concerned whether the respondent was a 'person aggrieved' under s 327 to he qualified to make the application to remove the caveat entered by the respondent. We do not subscribe to the view expressed by the learned counsel for the appellant that the LHCJ had gone plainly wrong in deciding the dispute relating to the Stamp Act by invoking the FC decision in *Chor Phaik Har*. Based on a careful reading of the FC judgment, the conclusion reached was explicit as to the correct position in law pertaining to the point when the beneficiary under an intestacy acquires an interest or property in the personal estate of the deceased person. In gist, considering the principle that the interest or property would only arise upon administration of the estate being completed and distribution made in accordance to the law governing distribution of an intestate estate, the LHCJ had arrived at a conclusion that was correct in law that the beneficiaries when making the renunciation of their rights under the DA did not have the capacity to make a gift to the respondent. He had in our view, correctly appreciated the law that in order to make an inter vivos gift, the giver must possess the right to the property in question which the beneficiaries did not possess at that point in time. Their renunciation of entitlement made vide tha DFA, as correctly found by the LHCJ, could not be equated to an inter vivos gift to the respondent.

[65] In essence, the respondent's submission is in accord with our considered view that the LHCJ had rightly held that the intestate death of the deceased has attracted the application of Distribution Act 1958 wherein the entitlement of the Tan siblings to the estate only arises by virtue of operation of law, namely s 6(1)(e) of the Distribution Act 1958. Under the said provision, the deceased's two children are merely 'entitled' to third-thirds of the estate. An entitlement to an estate must not be confused with a beneficial and legal right or interest in the estate which can be given absolutely as a gift to the respondent.

[66] We are in agreement with the respondent's contention in support of the LHCJ's conclusion that the assessment of Forms 14A made by the appellant under item 66(c) of the First Schedule to Act 378 is misconceived as the estate has been disclaimed by the Tan siblings which meant that the estate was never vested in them. In the circumstances, there can be no valid gift at all that may flow from the Tan siblings to the respondent. Based on the trite law principle

expounded in *Chor Phaik Har* on the interest or property of a beneficiary in the personal estate of the deceased under an intestatacy that we have already adverted to.

[67] In our deliberation we were guided by the following passage of the Court of Appeal judgment in the case of *Ngan & Ngan Holdings & Anor v Central Mercantile Corp (M) Sdn Bhd* [2010] 1 MLJ 822:

> '[21] It is trite law that no person can give a better title than he had — nemo dat quod non habet. Therefore, WTK, not being the registered proprietor of the property was never in a position to give the property as a gift or gratuity to the second defendant (see Supreme Court decision in *M & J Frozen Food Sdn Bhd & Anor v Siland Sdn Bhd & Anor* [1994] 1 MLJ 294; [1994] 2 CLJ 14.

[68] Proceeding now to the ground of appeal on the order imposing interest on the excess payment ordered to be refunded to the respondent, the appellant contended that it was an erroneous decision.

[69] We hold that the LHCJ had correctly referred to the law applicable to this issue, ie s 11 of the Civil Law Act 1956 ('the CLA') and O 42 r 12 of the Rules of Court 2012 ('the RC') which we reproduce below:

> Power of Courts to award interest on debts and damages s 11 In any proceedings tried in any Court for the recovery of any debt or damages, the Court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest as such rate as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment:
>
> Provided that nothing in this section —
>
> (a) shall authorize the giving of interest upon interest;
>
> (b) shall apply in relation to any debt upon which interest is payable as of right whether by virtue of any agreement or otherwise; or
>
> (c) shall affect the damages recoverable for the dishonour of a bil of exchange.
>
> Interest on judgment debts
>
> O 42 r 12 RC Subject to rule 12A, except when it has been otherwise agreed between the parties, every judgment debt shall carry interest as such rate as the Chief Justice may from time to time determine or at such other rate not exceeding the rate aforesaid as the Court determines, such interest to be calculated from the date of judgment until the judgment is satisfied.

[70] It is plain to us that the court that decides to allow any claim for the recovery of a debt which was the case here for the recovery of excess payment to the appellant held to be not in accordance with law, had a wide discretionary power to award interest where appropriate. The rate of 5%pa awarded by the

LHCJ was in compliance with O 42 r 12 of the RC as it did not exceed the rate presently determined by the Chief Justice.

[71] We do not see any error in principle in the LHCJ's decision that warrants our interference as follows:

As a consequence of the Refund Order, the Excess is a —

(1) 'debt' due from the Collector to the appellant within the meaning of s 11 CLA; and

(2) a 'judgment debt' as understood in O 42 r 12 RC.

CONCLUSION

[72] In summary, we are satisfied that the LHCJ was not wrong in principle or plainly wrong in his finding of fact that the true nature of the instant Forms 14A is solely to give effect to the renunciation made by the Tan siblings after having taken into consideration the Forms 14A, the effect of s 6(1)(e) of the Distribution Act 1958, the entire deed of family arrangement as well as the order granted by the Shah Alam High Court. The conclusion reached by the LHCJ that the true nature of the instrument of transfer could not be regarded as a gift from the Tan siblings to the respondent was not shown to be erroneous or a misinterpretation of the relevant principles and provisions of the applicable law. We would also note that the LHCJ had undertaken a detailed evaluation of law, facts and evidence in holding that the Forms 14A did not constitute a gift to the respondent but rather to give effect to the renunciation made by the Tan siblings.

[73] We, therefore, found no valid grounds to warrant interference with the decision of the LHCJ as the threshold plainly wrong test had not been met and accordingly, dismissed this appeal with costs of RM5,000 subject to allocator and upheld the decision of the High Court.

Appeal dismissed and High Court decision affirmed.

Reported by Ashok Kumar